Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)		
	)		
Business Savings Plan	)	IC Nos.	02-S67094
	)		02-S67097
Complaint Regarding	)		02-S69764
Unauthorized Change of	)		02-S70518
Subscriber's Telecommunications Carrier	)		02-S70989
			02-S71756
			02-S71944
			02-S71981
			02-S76412

ORDER

Adopted: March 10, 2003 **Released: March 12, 2003**

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints filed by Complainants[1] alleging that Business Savings Plan changed Complainants' telecommunications service providers without obtaining authorization and verification from each Complainant in violation of the Commission's rules.[2] We conclude that Business Savings Plan actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant each Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).[3] Section 258 prohibits the practice of

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1 *See* Appendix A.

2 *See* 47 C.F.R. §§ 64.1100 – 64.1190.

3 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order), stayed in part, MCI Business Savings Plan v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted, MCI Business Savings Plan v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See*, *e.g.*, *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (continued….)

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[4] In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[5] Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.[6] Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.[7]

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.[8] Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.[9] Carriers should note that our actions in this Order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.[10]

4. We received Complainants' complaints alleging that Complainants'

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(1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carrier*s, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

[4] 47 U.S.C. § 258(a).

[5] *See* 47 C.F.R. § 64.1120.

[6] 47 U.S.C. § 258(a).

[7] *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

[8] *See* 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

[9] *See* 47 C.F.R. §§ 64.1140, 64.1170.

[10] See 47 U.S.C. § 503.

telecommunications service providers have been changed from their authorized carriers to Business Savings Plan without Complainants' authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,[11] we notified Business Savings Plan of the complaint and Business Savings Plan responded.[12] Business Savings Plan states that it does not have letters of agency (LOAs) or third party verification recordings (TPVs) because the Complainants' accounts were acquired during a bulk transfer. Our rules allow carriers to transfer customers in bulk without an LOA or TPV.[13] A carrier must, however, send notice of the switch to the consumer and file that notice with the Commission at least thirty days before the switch.[14] Business Savings failed to comply with the filing requirement. We find that Business Savings Plan has failed to produce clear and convincing evidence that each Complainant authorized a carrier change.[15] Therefore, we find that Business Savings Plan's actions resulted in an unauthorized change in each of the Complainants' telecommunications service providers and we discuss Business Savings Plan's liability below.[16]

5. Business Savings Plan must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.[17] We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainants' authorized carriers nor Business Savings Plan may pursue any collection against Complainants for those charges.[18] Any charges imposed by Business Savings Plan on the subscriber for service provided after this 30-day period shall be paid by the subscribers to Complainants' authorized carriers at the rates the subscriber was paying to the authorized carriers at the time of the change in each Complainant's case.[19]

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[11] 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[12] See Appendix A.

[13] *See* 47 C.F.R 64.1120 (e).

[14] *See* 47 C.F.R 64.1120 (e)(1)(3).

[15] *See* 47 C.F.R. § 64.1150(d).

[16] If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See* 47 C.F.R. § 1.719.

[17] *See* 47 C.F.R. § 64.1160(b).

[18] *See* 47 C.F.R. § 64.1160(d).

[19] *See* 47 C.F.R. §§ 64.1140, 64.1160.

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainants against Business Savings Plan ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and neither Complainants' authorized carriers nor Business Savings Plan may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler, Deputy Chief
Consumer & Governmental Affairs Bureau

APPENIDX

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF CARRIER RESPONSE	AUTHORIZED CARRIER
02-S67094	September 25, 2001	September 9, 2002	Working Assets
02-S67097	September 24, 2001	September 9, 2002	Sprint
02-S69764	February 26, 2001	September 27. 2002	IDT
02-S70518	March 15, 2001	April 29, 2002	AT&T
02-S70989	March 27, 2001	May 17, 2002	AT&T
02-S71756	March 18, 2001	May 17, 2002	McLeod
02-S71944	March 25, 2002	May 24, 2002	Not provided
02-S71981	March 25, 2002	May 17, 2002	AT&T
02-S76412	June 6, 2002	July 5, 2002	AT&T